

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

OP.No. 6756 of 2003(D)

PETITIONER:

P.V.RAMACHANDRAN, FAIR COPY
SUPERINTENDENT, DIRECTORATE OF HEALTH SERVICES,
THIRUVANANTHAPURAM.

BY ADV. SRI.C.S.ABDUL SAMMAD
SRI.V.D.BALAKRISHNA KARTHA
SRI.PRASUN.S

RESPONDENTS:

1. STATE OF KERALA - REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF HEALTH SERVICES,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SHRI. SANDESH RAJA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 19/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP NO.6756/03

APPENDIX

PETITIONER'S EXTS:

Ext.P1 True copy of the order No.EC1/86931/87/DHS, dated 18.7.1987 from the 2nd respondent to the petitioner.

Ext.P2 True copy of the appeal dated 15.2.1995 from the petitioner to the 2nd respondent.

Ext.P3 True copy of the judgment dated 18.2.2002 in OP No.13810/95 of this Honourable Court.

Ext.P4 True copy of G.O.(Rt)No.294/2003/H&FWD dated 24.1.2003

Antony Dominic, J.
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O.P.No.6756 of 2003
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Dated this the 19th day of February, 2007.

JUDGMENT

Prayers in this Writ Petition are to quash Ext.P4 order and to direct the first respondent to allow full salary and allowances to the petitioner for the period from 5.7.1987 to 11.11.2003, during which he was kept under suspension. The petitioner also seeks an order directing the respondents to disburse the arrears of pay and allowances, annual increments, etc. which would have accrued to him during the aforesaid period had he been retained in the post held by him. It is seen that while working as Typist in the Government Leprosy Hospital, Koratty, the petitioner was placed under suspension by order dated 18.7.1987 with effect from 5.7.1987 for the reason that a crime case involving offences punishable under Sections 477(A) and 511 I.P.C. was registered against the petitioner by the Chalakudy Police as Crime No.196 of 1987 and that in that connection he was held under detention. It is seen that after trial, the petitioner was acquitted by the Trial Court giving him benefit of doubt. Following his acquittal by the Criminal Court, the petitioner was reinstated in service on

28.10.1993 and it was ordered that the orders regularising the period under suspension would be treated separately. Ultimately, it was ordered that the suspension period would be treated as duty for all service benefits except for pay and allowances and that the petitioner need be paid only subsistence allowance during the period he was kept under suspension.

2. Thereafter, a show cause notice was issued to the petitioner and after considering his explanation, an order was passed confirming that the period of suspension would be treated as duty, but only subsistence allowance would be paid to the petitioner. Aggrieved by the aforesaid order, the petitioner filed an appeal before the Government, which was rejected by order dated 19.7.1997. The aforesaid order was challenged before this Court in O.P.No.13810 of 1995. The above Original Petition was disposed of by Ext.P3 judgment dated 18.2.2002, quashing the Appellate order mentioned above and directing a fresh consideration by the Appellate Authority to decide as to which sub clause of Rule 56B, Part I of Kerala Service Rules applies to the petitioner. It was also ordered that a speaking order shall be passed after affording an opportunity to the petitioner to be heard. In pursuance to Ext.P3 judgment of this Court referred to above, after hearing the petitioner, the first respondent issued Ext.P4, holding that

the request of the petitioner for counting the period of suspension for all purposes is not acceptable to the Government and rejected the appeal. It is challenging the aforesaid order (Ext.P4) that this Original Petition is filed.

3. On going through the impugned order, it is seen that referring to the proceedings in the Criminal Court, the Appellate Authority has come to the conclusion that the petitioner was not innocent and that he can be treated as guilty as the charges against him stood proved. It is also stated that although the Department did not formally launch a Departmental enquiry following the suspension, since the proceedings were pending before the Criminal Court, the petitioner had a chance to prove his innocence. It is on the reasoning that the petitioner was guilty of the misconduct alleged against him that the appeal has been rejected by the Appellate Authority by Ext.P4 order.

4. After hearing the parties on either side, I am satisfied that Ext.P4 order cannot be sustained. It may be extending the benefit of doubt that the petitioner was exonerated, but the fact remains that he has been acquitted of the charges. Government also did not think it necessary to initiate disciplinary action against him. In that view of the matter, the Appellate Authority was not entitled to rely on the

proceedings of the Criminal Court to conclude on his guilt and deny the benefit that he was seeking. The Appellate Authority ought to have applied the provisions of Rule 56 B, Part I of K.S.R. as directed by this Court and examined his entitlement for the benefits. Ext.P4 ought to have been passed after considering whether, in the circumstances of the case, the suspension was wholly justified or not. This having not done, I am inclined to set aside Ext.P4 order of the Appellate Authority and direct that the matter shall be considered with notice to the petitioner taking into account the fact that by now the petitioner has retired from service. It is directed that the first respondent shall complete the proceedings within a period of three months from the date of receipt of a copy of this judgment.

The Original petition is allowed as above, no costs.

Antony Dominic
Judge.

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